



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CENTRO EUROPA BUILDING, SUITE 417
1492 PONCE DE LEON AVENUE, STOP 22
SAN JUAN, PR 00907-4127

MAR 17 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Hans Rutzen
Terminal Manager
Buckeye Caribbean Terminals, LLC
P. O. Box 186
Yabucoa, Puerto Rico 00767-0186

**Re: Administrative Compliance Order
Docket Number CWA-02-2011-3110
NPDES Permit Number PR0000400**

Dear Mr. Rutzen:

The United States Environmental Protection Agency (EPA), Region 2, has made findings that Buckeye Caribbean Terminals, LLC (Buckeye) is in violation of Sections 301 and 308 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1311(a) and 1318(a), for its failure to submit an NPDES permit application to EPA for its discharges of pollutants through point sources into navigable waters of the United States and for its discharges of pollutants through point sources into navigable waters of the United States without an NPDES permit. Enclosed are two (2) originals of the Administrative Compliance Order, Docket Number CWA-02-2011-3110, issued pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), which details these findings. Please acknowledge receipt of this Order on one of the originals and return it by mail to the address indicated above.

Failure to comply with the enclosed Order may subject Buckeye to civil and/or criminal penalties pursuant to Section 309 of the Act. Failure to comply with this Order may also subject Buckeye to ineligibility for participation in work associated with Federal contracts, grants, or loans. If you have any questions concerning this Order, please contact Mr. José A. Rivera of this Division at (787) 977-5842.

Sincerely,

Carl-Axel P. Soderberg
Director
Caribbean Environmental Protection Division

Enclosures

cc: Wanda García, EQB (w/ enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In Matter of:

BUCKEYE CARIBBEAN TERMINALS, LLC
State Road 901, Km. 2.7, Barrio Camino Nuevo
Yabucoa, Puerto Rico 00767

NPDES Tracking Number PR0000400

Proceeding pursuant to § 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

**ADMINISTRATIVE
COMPLIANCE ORDER**

**DOCKET NUMBER
CWA-02-2011-3110**

I. STATUTORY AUTHORITY

1. The following ORDER is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the Clean Water Act, 33 U.S.C. § 1251 et seq. ("CWA" or the "Act").
2. This authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further redelegated to the Director, Caribbean Environmental Protection Division, Region 2, EPA.

II. DEFINITIONS AND STATUTORY PROVISIONS

The following definitions and statutory and regulatory provisions apply in this Order:

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that "Except as in compliance with this Section and Sections ... 402, and 404 of the Act, the discharge of any pollutant by any person shall be unlawful."
2. Section 402(a)(1) of the Act, 33 U.S.C. § 1342(a)(1), provides that "the Administrator [of EPA] may, after opportunity for public hearing, issue a permit for the discharge of any pollutant".
3. The term "navigable waters" includes the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).

4. The term "pollutant" includes, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6).
5. The term "discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. § 1362(12).
6. The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged, pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14).
7. The term "person" includes an individual, corporation, partnership, association or municipality, pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5).
8. The term "CFR" means the Code of Federal Regulations.
9. The term "NPDES" means National Pollutant Discharge Elimination System, pursuant to 40 C.F.R. § 122.2.
10. The term "owner" or "operator" means the owner or operator of any "facility" or "activity" subject to regulation under the NPDES program, pursuant to 40 C.F.R. § 122.2.
11. The term "facility" or "activity" means any NPDES point source or any other facility or activity (including land appurtenances thereto) that is subject to regulation under the NPDES program, pursuant to 40 C.F.R. § 122.2.

III. FINDINGS

With Respect to Buckeye Caribbean Terminals, LLC

1. On December 10, 2010, Shell Caribbean Investments Limited sold all of its shares of Shell Chemical Yabucoa, Inc. (Shell) to Buckeye Caribbean Holdings Limited.
2. On December 17, 2010, Shell Chemical Yabucoa, Inc. changed its name to Buckeye Caribbean Terminals, Inc.

3. On December 17, 2010, Buckeye Caribbean Terminals, Inc. changed its organization form from a corporation to a limited liability company, becoming Buckeye Caribbean Terminals, LLC.
4. Buckeye Caribbean Terminals, LLC (Respondent) is a corporation duly organized under the laws of the Commonwealth of Puerto Rico.
5. The Department of State (DOS) records indicate that the Respondent was registered in the DOS on December 17, 2010, under corporate registration number 123587.
6. Respondent is a person pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5).
7. Respondent's principal office is located at State Road 901, Km. 2.7, Barrio Camino Nuevo, Yabucoa, Puerto Rico 00767.

With Respect to Respondent's Facility

8. Respondent owns a petrochemical facility, a tank farm, a loading and unloading dock, a marine terminal and a fuel trucks loading rack.
9. The petrochemical production activities ceased at the facility on or about July 17, 2008.
10. As of the effective date of this ORDER, Respondent operates, among others: (a) a tank farm; (b) a loading and unloading dock; (c) a marine terminal; (d) a fuel trucks loading rack; (e) a wastewater collection system; (f) an uncontaminated storm water collection system; (g) a contaminated storm water collection system; (h) two wastewater treatment plants; (i) oil/water separator units at the tank farm and petrochemical facility; (j) treated process wastewater discharge outfall 001; (k) uncontaminated storm water outfall 002; and (l) related appurtenances.
11. The facility is located at State Road 901, Km. 2.7, Barrio Camino Nuevo, Yabucoa, Puerto Rico 00767.

With respect to the NPDES Permit Number PR0000400

12. On August 30, 2000, EPA issued a NPDES permit (Permit) to Puerto Rico Sun Oil Company (SUNOCO) for the discharges of pollutants from the facility into waters of the United States. The NPDES permit number is PR0000400.
13. The Permit became effective on November 1, 2000.

14. The Permit authorized the discharge of treated wastewater into the Yabucoa Bay, by means of discharging such treated wastewater through a multi-port diffuser located at the outfall serial number Outfall 001 deep seawater pipeline, thereby creating a mixing zone in the Yabucoa Bay.
15. Based on investigations by Shell and EPA, the Outfall 001 deep seawater outfall pipeline discharges in the Caribbean Sea.
16. The Permit also authorized the discharge of uncontaminated storm water through outfall serial number 002 into Santiago Creek.
17. The Permit established effluent limitations, monitoring requirements, reporting requirements, special conditions and general conditions.
18. The Caribbean Sea, Yabucoa Bay and Santiago Creek are waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).
19. Per Shell's request, on January 30, 2002, EPA issued a permit modification to transfer the Permit from SUNOCO to Shell. The permit modification became effective on December 31, 2001.
20. On March 10, 2003, EPA issued another permit modification to correct typographical errors and to specify the types of wastewater generated at the facility under Shell's operations. This permit modification became effective on March 10, 2003.
21. On April 29, 2004, EPA issued a minor permit modification to correct a typographical error (to include sanitary wastewater in Table 1) and to correct the latitude/longitude coordinates for the interim mixing zone in Special Condition 26.a
22. Pursuant to 40 C.F.R. § 122.61(a), except as provided in 40 C.F.R. § 122.61(a), an NPDES permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under §122.62(b)(2)), or a minor modification made (under §122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under the Act.
23. However, pursuant to 40 C.F.R. § 122.46(b), the term of an NPDES permit shall not be extended by modification beyond the maximum duration. Pursuant to 40 C.F.R. § 122.46(a), the maximum duration of an NPDES permit is 5 years.
24. The Permit expiration date is October 31, 2005.

25. Pursuant to 5 U.S.C. § 558(c), the Permit continued in full force and effect until December 10, 2010, date when Shell changed its name to Buckeye Caribbean Terminals, Inc.

With Respect to the NPDES Permit Application

26. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete application to EPA.
27. Pursuant to 40 C.F.R. § 122.21(a)(2)(i), all applicants for EPA-issued permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there.
28. As of the effective date of this ORDER, Respondent does not have an effective permit and has not submitted to EPA an NPDES permit application for its discharges through outfall serial numbers 001 and 002.

IV. CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251 et seq.
2. Respondent is in violation of 40 C.F.R. § 122.21, which implements Section 308(a) of the Act, 33 U.S.C. § 1318(a), for its failure to submit an NPDES permit application to EPA for its discharges of pollutants through point sources into navigable waters of the United States.
3. Respondent is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for its discharges of pollutants through point sources into navigable waters of the United States without an NPDES permit.

V. ORDERED PROVISIONS

In consideration of the above FINDINGS, and pursuant to the provisions of Section 309(a) of the Act, 33 U.S.C. §1319(a), EPA has determined that compliance with the following requirements is reasonable.

IT IS HEREBY ORDERED:

1. **That immediately upon receipt of the originals of this ORDER,** Respondent shall complete the acknowledgment of receipt on one of the originals of the ORDER and return said original to the Chief, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, EPA, to the address specified below.
2. **That any document to be submitted by Respondent as part of this ORDER** shall be signed by an authorized representative (see 40 C.F.R. §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. **That immediately upon receipt of this ORDER,** Respondent shall comply with all terms, conditions and requirements included in the Permit referenced in Part III, Paragraph 12 of this ORDER.
4. **That within fifteen (15) days of receipt of this ORDER,** Respondent shall submit to EPA the following information:
 - a. The names of its officers and authorized representatives.
 - b. A copy of the transfer of ownership between Shell and Respondent.
 - c. The detailed description of the current operations at the facility.
 - d. A detailed description of any planned changes that will occur at the facility during the next three (3) years.

5. **That within forty-five (45) days of receipt of this ORDER**, Respondent shall submit to EPA and the Environmental Quality Board of the Commonwealth of Puerto Rico (EQB), a complete and accurate NPDES permit application for all its discharges of pollutants through point sources into waters of the United States. **Attachment 1** includes a set of instruction to assist Respondent in submitting the required NPDES applications and information. The NPDES applications [General Information (Form 1), Form 2-C, and Form 2-F] are found at www.epa.gov/owm/npdes.htm.
6. **That pursuant to Section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4)**, EPA is providing Respondent with an opportunity to confer with EPA concerning Provisions 4 and 5 of this ORDER. **No later than seven (7) calendar days from receipt of this ORDER**, Respondent must submit a written request to the Chief, Clean Water Regulatory Branch, Division of Environmental Planning and Protection, at the address specified below, to request a meeting with representatives of EPA. The request must include a proposed agenda and at least two proposed dates for the meeting. If Respondent does not request the meeting within the seven (7) calendar days of receipt of this ORDER, EPA may deem that Respondent has waived its right to confer with EPA.
7. **That within thirty (30) days upon receiving from EPA a notification of completeness of application pursuant to 40 C.F.R. § 122.21(e)**, Respondent shall submit a detailed line-item cost report on the amount of time and associated costs to submit a complete and accurate NPDES application.
8. **That all information and/or submissions required to be submitted by this ORDER** shall be sent by registered mail or its equivalent to the following addresses:

Director, Water Quality Area
Environmental Quality Board
P. O. Box 11488
San Juan, Puerto Rico 00910,

Chief, Clean Water Regulatory Branch, 24th Floor
Division of Environmental Planning and Protection
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866,

and



Chief, Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Edificio Centro Europa, Suite 417
1492 Avenida Ponce de León
San Juan, Puerto Rico 00907-4127.

9. Any questions concerning this ORDER should be directed to Mr. José A. Rivera, Senior Environmental Engineer, Multimedia Permits and Compliance Branch, at (787) 977-5865 or rivera.jose@epa.gov.

This ORDER does not constitute a waiver from compliance with or a modification of the effective terms and conditions of the Act, and its implementing regulations, which remain in full force and effect. This ORDER is an enforcement action taken by EPA to ensure swift compliance with the Act. Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal actions which would seek penalties, fines, or other appropriate relief under the Act.

This ORDER shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

Dated: 3-17-2011

Signed: 
 **CARL-AXEL P. SODERBERG**
Director
Caribbean Environmental Protection Division

ATTACHMENT 1

1. Respondent must submit an NPDES permit application Form 1, Form 2C for process wastewater in Outfall 001, and Form 2F for storm water in Outfalls 001 and 002. If process wastewater will also be discharged through Outfall 002, Respondent must also submit application Form 2C for Outfall 002.
2. Forms 2C and 2F must be representative of both the current facility operations and the facility operations after any planned changes which are to be made within the term of the NPDES permit for which Respondent is applying. Also, in Form 2C, Item II.B, report which operations are current and which are based on such planned change(s).
3. Fill Out Separate Application Forms if there are any Planned Changes Not Representative of Current Operations - According to Form 2C and 2F application instructions, the values reported must be representative. Form 2C instructions indicate that values must be representative of Respondent's normal operation, to the extent feasible, with all processes which will contribute wastewater in normal operation, and with treatment systems operating properly with no system upsets.
4. If Respondent: (a) is currently planning a change in operations (i.e., demolition) or any other changes to the facility during the term of the NPDES permit for which Respondent is applying, and (b) if the change meets one of the following two requirements specified in Item 6 below, and (c) if the representative monitoring data for the current operations will not be representative for Outfall 001 and/or Outfall 002 data for the operations in place after the planned changes are made, then **fill out and submit two separate sets of application forms** (Form 2C for Outfall 001 and/or Form 2F for Outfalls 001 and 002).
5. Please be informed that one set must be completed to represent the normal operations before any change and the other set must be completed to represent the operations after the planned change.
6. A planned change as referred to in Items 4 and 5 above includes: (a) an alteration or addition that could significantly change the nature of pollutants discharged (e.g., which pollutants) or significantly increase the quantity of pollutants discharged, or (b) an alteration or addition which results in a significant change in the facility's sludge use or disposal practices.

ATTACHMENT 1 (contd.)

7. Because EPA generally issues permits for the maximum 5 year term, Respondent must base its decision on planned changes which are to be made on a 5-year term (plus a 180-day estimated permit issuance process from the date of EPA's receipt of a complete and accurate NPDES permit application).
8. Please identify which set of forms (2C and 2F) is for the current operations and which is for the operations after the planned change. If Respondent's plan subsequently changes before permit issuance but after it submits to EPA the application for the planned change discussed herein (for changes to be made within the 5-year term), EPA may decide not to process that revised change during the current permit preparation and issuance process. If the change is planned outside the 5-year term, then Respondent would not need to submit a set of applications for this change. However, if Respondent's plans change after permit issuance, please be notified that Respondent would then need to consider whether the change meets the notification requirements for a planned change as specified in 40 C.F.R. § 122.41(l)(1) and in Part II of any subsequent NPDES permit.
9. The application Form 2C, Items V.A through V.C requires reporting actual, representative data. The Form 2C instructions indicates that "data from samples taken in the past may be used, provided that: (a) all data requirements are met; (b) Sampling was done no more than three years before submission; and (c) all data are representative of the present discharge."
10. Representative data for a planned change would not be available for the discharges through Outfalls 001 and 002 until analyses are made after the planned change. Form 2C is for applicants who check "yes" in Item II.C in Form 1. It is intended for existing facilities which have actual, representative effluent data available and does not provide instructions for using estimates. Form 2F also does not provide instructions for using estimates. Therefore, if Respondent is providing estimates (i.e., planned change) on Form 2C and/or Form 2F instead of representative analytical results, then use the instructions in the NPDES application Form 2D for providing the source of the estimates for each pollutant for which Respondent shows an estimate.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In Matter of:

BUCKEYE CARIBBEAN TERMINALS, LLC
State Road 901, Km. 2.7, Barrio Camino Nuevo
Yabucoa, Puerto Rico 00767

NPDES Tracking Number PR0000400

Proceeding pursuant to § 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

**ADMINISTRATIVE
COMPLIANCE ORDER**

**DOCKET NUMBER
CWA-02-2011-3110**

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I do hereby acknowledge the receipt of a true copy of the Order CWA-02-2011-3110. Pursuant to the signatories' requirements in 40 C.F.R. § 122.22, I certify that I am authorized to sign this acknowledgment.

Print Name

Date

Print Title

Signature